

Montana Water Court  
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**FILED**  
08/11/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0309-R-2022  
Lambert, Kathryn  
20.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANTS: Mary A. Boutselis; Loretta A. Chapman Living Trust;  
Johnnie M. Denton; Maridith T. Denton; Jeffrey S.  
Jackson; Deborah L. Mackey; Michael J. Mohan;  
Pierce Family LLC

**CASE 43B-0309-R-2022**  
43B 193596-00

NOTICE OF INTENT TO APPEAR: Emigrant Peak Ranch LLC

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Claim 43B 193596-00 appeared in the Preliminary Decree with the following remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 200 MINER'S INCHES DECREED IN CASE NO. 2112 , PARK COUNTY. 193596-00, 193598-00.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 28.00 GPM PER ACRE.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/28/2017 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY MOHAN MICHAEL JOSEPH SR.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/28/017 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY CHAPMAN LORETTA A LIVING TRUST.

Emigrant Peak Ranch LLC filed a notice of intent to appear. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. By the time this Case was consolidated, Michael J. Mohan and Loretta A. Chapman Living Trust were listed as claimants. The February 16, 2022 Court Minutes, Order Entering Defaults, Order Setting Filing Deadlines, and Orders Updating Caption And Mailing List states that the decree exceeded issue remark was erroneously added to the claims and there were no additional proceedings needed to address the remark.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On October 18, 2022 Deborah Mackey filed her response concerning the flow rate issue remark. The February 8, 2023 Court Minutes, Order Entering Defaults, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation [“DNRC”] to resolve the flow rate issue remark. The May 17, 2023 DNRC Memorandum recommends a flow rate reduction and includes a Verified Motion To Amend Water Right Claim, for the same flow rate reduction, signed by Mary A. Boutselis, Johnnie M. Denton, Maridith T. Denton, Jeffrey S. Jackson Michael J. Mohan, and Pierce Family LLC. The June 1, 2023 Order Entering Defaults, Order Setting Deadline Pursuant To Section 85-2-248(9), MCA, and Order Setting Filing Deadline For Emigrant Peak Ranch LLC states:

Nothing was filed by Loretta A. Chapman Living Trust and Deborah L. Mackey.

As Loretta A. Chapman Living Trust and Deborah L. Mackey failed to comply with the Court’s Order issued under section 85-2-248, MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the defaults of Loretta A. Chapman Living Trust and Deborah L. Mackey are ENTERED, and pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline is **June 22, 2023** for Loretta A. Chapman Living Trust and Deborah L. Mackey to show cause in writing why the Court should not proceed with amending claim 43B 193596-00 as recommended by the DNRC Memorandum and as requested by the other claimants in the Verified Motion To Amend Water Right Claim. If no additional information is filed by this deadline, the Court will conclude they agree with reducing the flow rate to 3.03 cfs.

Nothing was filed. On July 10, 2023 Emigrant Peak Ranch LLC's Position Statement was filed which includes its withdrawal of notice of intent to appear. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the flow rate is 5.00 CFS. The flow rate should be 3.03 CFS. The flow rate issue remark should be removed as addressed and resolved.
2. The decree exceeded issue remark was erroneously added to this claim. It should be removed as erroneous.
3. The ownership remarks should be removed as the identified persons were claimants by the time this Case was consolidated.

#### CONCLUSION OF LAW

The settlement documentation filed is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3), (9), and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends

that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

Service Via Email:

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Loretta A. Chapman Living Trust  
% Linda Carson  
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Bozeman, MT 59718-7767

Johnnie M. Denton  
Maridith T. Denton  
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Emigrant, MT 59027-1183

Deborah L. Mackey  
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~~Gardiner, MT 59030~~  
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Pray, MT 59065

Michael J. Mohan  
% Harold Grisamore  
PO Box 24  
Pray, MT 59065

Pierce Family LLC  
312 S 6th St  
Livingston, MT 59047

**Note: Service List Updated 8-2-23**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 193596-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**

MICHAEL J MOHAN  
%HAROLD GRISAMORE  
PO BOX 24  
PRAY, MT 59065

JOHNNIE M DENTON  
PO BOX 1183  
EMIGRANT, MT 59027 1183

MARIDITH T DENTON  
PO BOX 1183  
EMIGRANT, MT 59027 1183

DEBORAH L MACKEY  
30 MULE DEER RD  
PRAY, MT 59065

PIERCE FAMILY LLC  
312 S 6TH ST  
LIVINGSTON, MT 59047

CHAPMAN, LORETTA A LIVING TRUST  
%LINDA CARSON  
648 BUSHNELL RD  
BOZEMAN, MT 59718 7767

MARY A BOUTSELIS  
318 STRAWBERRY HILL RD  
CENTRE HALL, PA 16828 9210

JEFFREY S JACKSON  
318 STRAWBERRY HILL RD  
CENTRE HALL, PA 16828 9210

**Priority Date:** JUNE 1, 1902

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.03 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 80.00

**Source Name:** SIXMILE CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	20	6S	8E	PARK

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	80.00		NE	20	6S	8E	PARK
<b>Total:</b>	80.00						

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**Remarks:**

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION ISSUED 05/30/1995. NOTICE OF COMPLETION DUE 12/31/1996. SEE 43B 193596-00